IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 1965 of 1982

For Approval and Signature:

Hon'ble MR.JUSTICE D.C.SRIVASTAVA Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements?

2. To be referred to the Reporter or not?

3. Whether Their Lordships wish to see the fair copy of the judgement?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge?

Nos. 1 to 5 No

FAKIRA MANSUKH VAGHARI

Versus

GULAM RASUL AHMED BUCHAD

Appearance:

MR SC DESAI for Petitioner

MR SK BUKHARI for Respondent No. 1

CORAM : MR.JUSTICE D.C.SRIVASTAVA

Date of decision: 07/07/98

ORAL JUDGEMENT

This is tenant's revision under section 29(2) of the Bombay Rent Act against the judgment and decree of the lower Appellate Court granting decree for eviction against him and in favour of the landlord.

The brief facts are that the disputed accommodation was let out to the revisionist on monthly

rent of Rs.2/_ only. He did not pay rent from 1.6.1961 to 31.5.1977 amounting to Rs.381/_ for a period of 192 months. Notice of demand was served by Registered Post on 29.4.1977. The notice is dated 26.4.1977. Neither the notice was replied nor the arrears were paid hence suit for eviction was filed in which Rs.70/- only were paid as rent which was within limit.

The suit was resisted by the revisionist on several grounds. He denied service of notice. He also pleaded payment of Rs.100/_ to the respondent by Money Order and further pleaded the deposit of the balance in Court on the first date of hearing and also pleaded subsequent regular deposits in Court.

The Trial Court on presumption, surmises and conjectures held that signature on the A.D. of registered notice was mysterious, hence there was no valid service of notice. It also found that Rs.100/_ were paid by Money Order to the landlord which were not adjusted. Subsequent deposits were held to entitle the tenant to the protection of section 12 (3)(b) of the Act. With these findings the suit was dismissed.

An appeal was preferred. The Appellate Court disagreed with the Trial Court regarding service of notice and payment of rent amounting to Rs.100/_ through Money Order and findings recorded by the Trial Court were specifically set aside by the Appellate Court and the suit was decreed. It is therefore this revision.

In spite of the revision of the list twice none appeared for the revisionist. Mr.S.K.Bukhari for Respondent No.1 was heard. The judgments of the two Courts below were examined.

The lower Appellate Court has rightly drawn presumption of service of notice sent by registered post. Notice of demand and eviction was sent by registered post at correct address and acknowledgment due was returned with signature showing that the notice was received by the addressee. The Trial Court was suspicious about the signature on the acknowledgment due. If registered notice is sent at correct address and an acknowledgment due is received with signature the presumption is that it was received by the tenant. Merely on the ground of illiteracy he cannot be permitted to say that the notice was not received by him. He had no courage to disown his signature on acknowledgment due. Instances are not rare where even illiterate persons are able to merely sign written letters/documents etc. Presumption of service

registered notice was thus rightly drawn by the lower Appellate Court.

The lower Appellate Court rightly concluded that notice of demand was neither complied with nor replied within the period of one month of service nor any dispute regarding standard rent was raised by the tenant.

So far as the payment of Rs.100/_ sent by Money Order is concerned the landlord accepted payment but he came out with a case that this payment was received not towards rent but towards price of goods sold to the tenant-defendant. This version was believed by the lower Appellate Court but the Trial Court on mere surmises and presumptions held that this amount was accepted towards rent. If the landlord had supplied goods or sold goods to the tenant it was his option to accept Rs.100/_ towards price of goods sold or towards rent. There is nothing on record to show that the tenant made specific mention that the amount of Rs.100/_ was to be adjusted towards rent only. Consequently the landlord was justified in adjusting this amount towards price of goods sold to the tenant. If this amount is excluded then certainly the tenant failed to pay entire arrears within a month of service of demand notice. Even time barred arrears should have been tendered by the tenant. Ofcourse time barred arrears of rent could not be claimed by the landlord in the suit but that does not imply that the tenant was exonerated of his liability from tendering the time barred rent in response to notice of demand to the landlord.

If this payment of Rs.100/- is excluded which was rightly excluded by the lower Appellate Court the tenant was not entitled to the benefit of protection of section 12(3)(b) of the Bombay Rent Act, 1947. The view to the contrary taken by the Trial Court on this ground is also erroneous and was rightly set aside by the lower Appellate Court.

In the instant case it was proved that the rent was payable monthly because there is nothing on record to show that Rs.2/_ were exclusive of the municipal tax and education cess. It is further proved that the tenant revisionist was in arrears of rent for more than six months on the date of the notice. It is further proved that there was no dispute raised by the tenant regarding standard rent within one month of service of notice or afterwards. It is also proved that notice under section 12(2) of the Act was served on the revisionist. Lastly it is proved that the revisionist failed and neglected to

pay the entire arrears within one month from the date of receipt of the notice. On these proved facts section 12(3)(a) was rightly applied by the lower Appellate Court and it was justified in granting decree for eviction. Merely because the judgment and decree of the lower Appellate Court is non concurrent interference is hardly required especially when the judgment and decree of the lower Appellate Court is in accordance with law. There is thus no merit in this revision which is hereby dismissed. Parties to bear their own costs.

Sd/-
(D.C.Srivastava, J)

m.m.bhatt